

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

MATTHEW WEST

)
)
)
)
)

CRIMINAL NO. 06-10281-WGY

GOVERNMENT’S MOTION FOR UPWARD DEPARTURE/DEVIATION

The United States of America, by and through Assistant United States Attorney John T. McNeil, respectfully submits this motion for an upward departure under the United States Sentencing Guidelines and an upward deviation from the otherwise applicable Guideline Sentencing range. In short, this Court should reject West’s recent manipulation of his prior state court conviction and evaluate him as if he qualified as a career offender under the Sentencing Guidelines and 28 U.S.C. §994(h).

West’s Criminal History

The PSR’s calculation of West’s criminal history grossly understates the seriousness and extent of his past criminal conduct. It also underestimates his propensity to commit crimes in the future. West has an extensive criminal history which reflects a persistent inability to conform his conduct to the law. That history, coupled with the nature and variety of crimes in which he engaged in connection with this case, reveal that West is a career criminal in the common meaning of that term, if not the statutory definition.

West began his criminal career early, and has consistently engaged in crimes throughout his life. At age 16, West was convicted in two separate cases for assault and battery with a dangerous weapon. PSR ¶¶ 40, 41. For these crimes he was committed to the Department of

Youth Services. Id. At age 19, West was convicted of distributing cocaine, distributing marijuana and assault and battery on a police officer. PSR ¶42. At age 20, West was convicted a second time for assault and battery on a police officer and also for assault and battery with a dangerous weapon. PSR ¶44. At age 22, West was convicted again for distributing cocaine. PSR ¶45. This time West was convicted in Virginia and served approximately five years incarceration. At age 30 – after serving that extended sentence in Virginia – West was convicted for assault and battery (the victim listed in the complaint was a police officer) and resisting arrest, among other things.¹ At age 36, he engaged in the instant offenses and related conduct, which included the sale of cocaine, attempted identity theft, operating unlawful stripper parties, paying-off a public official (Pulido), and aiding and abetting prostitution.² At age 37, at the time of his arrest in this case, he struggled with agents seeking to arrest him. PSR ¶19.

West’s criminal history reveals a man who has routinely engaged in violent conduct. Significantly, the victims of these violent acts have primarily been law enforcement officers, as noted above. Moreover, he also struggled with federal agents in this case. This repeated violent conduct alone should persuade the Court to treat West as a career offender.

West’s criminal history also reveals a regular involvement in dealing narcotics. PSR ¶¶ 43, 45. While there have been periods in which West was not charged and prosecuted, there is

¹ Even though a Quincy District Court judge recently vacated this conviction, West’s counsel made it clear that West was in fact guilty of the crime and would plead guilty to the charges after the federal sentencing.

² To the extent there is any doubt that prostitution was part and parcel of the stripper parties, the government will provide to the Court recordings of Tatiana Hall, West’s fiancée and partner in operating the parties, speaking with Roberto Pulido about men purchasing sexual favors at and after the parties, and Hall’s hiring of a stripper who did not dance but only provided “favors” to the customers.

little indication that West led a crime-free life during those periods. To the contrary, as set forth below, the evidence reveals that West routinely engaged in unlawful conduct, such as running illegal stripper parties at which prostitutes danced and then sold their services.

In short, West's life has been punctuated by, if not dominated by, crime. A sentence of 12-18 months neither reflects the history and characteristics of the defendant nor protects the public from further crimes of the defendant. See 18 U.S.C. §§3553(a)(1) and (2). As a result, the Court should depart or deviate to a sentence substantially above the Guideline range.

Circumstances of the Offense

The circumstances of the offenses of conviction also support a substantial upward departure/deviation. West would have this Court believe that he was an otherwise law-abiding citizen when he was persuaded by the cooperating witness (CW) to sell cocaine on two occasions. He would have the Court believe that these were two isolated instances of doing a friend a favor. He would also have the Court believe that he was targeted for federal prosecution solely to squeeze him for information about the parties he operated in connection with his fiancée, Tatiana Hall, and Boston Police Officer Roberto Pulido. The evidence belies these claims.

First, as set forth above, West had been convicted of dealing cocaine twice before. In fact, he spent nearly five years in a Virginia penitentiary for dealing cocaine. More importantly, the recordings of the drug transactions in this case reveal that West was routinely purchasing significant quantities of cocaine, if not selling cocaine as well, at the time that the CW approached him. For instance, when first asked by the CW for cocaine, West immediately

responded not only that he had a source for it, but that it was high quality cocaine.³ He also told the CW that he did not deal in “small stuff” (gram quantities) and was aware, without checking with his dealer, the prices for “teenagers” and for “balls.” See Exhibit 1 at 5. West’s connection with his source of cocaine was so good, that he got it for a discount: “I mean some people will ask for 150, but I mean . . . I mean he’s giving them to me for 125 apiece . . .” Id. The only logical inference from this recording is that West was routinely purchasing eight-ball quantities of cocaine before he was approached by the CW. Thus, West’s claim that his sale of cocaine to the CW was an isolated incident brought on by the CW is plainly at odds with the evidence in this case.

It is also important for the Court to note – and for the sentence to reflect – uncharged but related conduct. The sales of cocaine were made during West’s operation of an unlicensed “after-hours” club at which strippers routinely performed and then offered sexual favors to customers for a fee.⁴ These unlicensed parties were protected by a corrupt Boston Police officer, and catered to well-known drug dealers.

Moreover, West came to the attention of federal agents in the context of an identity theft operation. PSR ¶¶10-12. West appeared at a meeting between the CW and Pulido at which the CW expected Pulido to purchase fraudulently obtained gift cards. Instead, Pulido passed the fraudulent cards to West and West paid for them. At that meeting and in subsequent meetings,

³ “Yeah, my peoples’ get down . . . good, good, good.” See Exhibit 1 at 5.

⁴ In addition to the recordings noted above, there is ample evidence that prostitution was part and parcel of the parties. See United States v. Pulido, et al., Crim. No. 06-10248-WGY (Doc.No.1)(agent affidavit outlining evidence of prices charged for sexual favors offered at parties).

West offered to assist the CW and Pulido in stealing identifying information for use in the fraudulent card operation. Among other things, West, who was employed by a contractor that provided services to large companies such as NSTAR and Digimarc, agreed to seek out identifying information in those companies to use in the scheme. West also agreed to assist Pulido in the collection of license plates of “fancy ass cars” so that Pulido could run the plates of the cars through the Boston Police Department computer system to obtain individuals’ identifying information. Ultimately, West provided to the CW a list of license plates which he had gathered on the understanding that those plates would be provided to Pulido and then used in the identity theft scheme. Again, West’s claim that he was an otherwise law-abiding citizen who just happened to sell cocaine on two occasions is directly contradicted by the evidence in this case.

West’s assertion that he was unfairly targeted for prosecution is also rapidly dispatched. The testimony revealed that West was offered an opportunity to cooperate when the FBI initially contacted him. However, those agents also told him he would be prosecuted regardless of his cooperation. When West sought complete immunity from prosecution, the government rejected this notion. It did so in large part because West qualified as a career offender. As a career offender engaged in a wide range of criminal conduct uncovered in the Pulido investigation, West was an appropriate candidate for federal prosecution and complete immunity was never a realistic resolution, regardless of any cooperation.

Finally, West should not be able to gloss over the fact that he had been engaging in illegal conduct with Pulido for an extended period of time. Remarkably, West has submitted a character

reference in support of a reduced sentence authored by Pulido.⁵ In the letter submitted by West, Pulido claims that, “I have always known that Mr. West strongly opposed any drug use and prohibited anyone from attempting to sell drugs in his presence.” This statement, in light of the audio/video recordings of West selling cocaine in connection with the parties, is indicative of the false impression West is hoping to employ to escape a substantial sentence in this case. In fact, it is precisely this kind of false impression which West employed in his hearing before the Quincy District Court to persuade it to unlawfully vacate his prior conviction.

Promoting Respect for the Law & General Deterrence

This Court should impose a substantial sentence – indeed, it should treat the defendant as a career offender – in order to promote respect for the law and to provide adequate general deterrence. This Court should do so even though West has successfully, albeit temporarily, persuaded a state court judge to unlawfully vacate one of his prior predicate convictions. To treat the defendant otherwise would not only conflict with the purposes of sentencing of this particular defendant, but would encourage other defendants to engage in the type of last-minute manipulations of the state court process seen here.

As set forth above, West’s criminal history easily places him within that group of defendants whom Congress intended to treat as career offenders: two prior convictions for drug distribution and three prior convictions for assault and battery on police officers. The career offender statute was intended to impose “a sentence of imprisonment at or near the maximum term authorized” for defendants who had two prior “strikes.” See 28 U.S.C. §994(h). In other

⁵As the Court is aware, Pulido is currently under indictment in this District on narcotics and other charges.

words, Congress intended the third “strike” to be the one that sent a defendant to jail for an extended period. Here, West has had five prior “strikes,” and as many lost opportunities to conform his conduct to the law. In short, he has struck out and an extended period of incarceration is in keeping with Congressional intent.

Imposing a career offender sentence in this case is also critical to promoting respect for the lawful authority of this Court. It is plain that Quincy District Court Justice Moriarty’s granting of West’s motion to vacate one of his prior convictions was flatly and flagrantly unlawful. Even she acknowledged that she would be reversed by the appeals court, and characterized her decision as a “Christmas present” to the defendant. What is more remarkable about her action is that it was undertaken for the sole purpose of manipulating West’s federal sentencing. That is, Justice Moriarty had such mistrust and disrespect for this Court, that she felt compelled to engage in an unlawful act.

In vacating West’s prior conviction, Justice Moriarty sought to usurp a federal court’s sentencing discretion. Instead of evaluating her own plea colloquy from several years before – which she assumed was correct -- she reviewed the PSR from this case in order to evaluate whether she believed the career offender guidelines were an appropriate sanction for a crime over which she had no jurisdiction. Justice Moriarty knew little of the crime in this case other than what defense counsel told her; she knew nothing of the context in which the defendant engaged in those crimes; and she accepted at face value defense counsel’s speculations as to the government’s motives for bringing the federal case in the first place. Nonetheless, Justice Moriarty – without the benefit of a complete record or representation by the government – evaluated whether this Court had the wisdom to look at all the relevant factors and impose a just

sentence. Ironically, she found this Court lacking.

In sentencing Mr. West, this Court must make clear that it will not abide by a defendant's manipulation of the state court system. This Court must also make clear that state courts must respect the sovereignty of federal courts in sentencing federal defendants for the commission of federal crimes. A "conviction" should be just that – certainty that the defendant committed the crime. There should be no uncertainty – no "un-conviction" – six years after the fact because the defendant finally finds himself facing the federal consequences of a life of crime.

Conclusion

For the reasons set forth herein, and those to be argued at the sentencing hearing, both the defendant's criminal history score and his adjusted offense level fail to reflect the seriousness of the offense, the defendant's criminal history, and his propensity to commit future crimes. Moreover, an upward deviation from the Guideline range calculated in the PSR is necessary because the range fails to reflect the history and characteristics of the defendant, fails to promote respect for the law, fails to afford adequate general deterrence, and fails to adequately protect the public from further crimes committed by the defendant.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

Date: October 9, 2007

By: /s/ John T. McNeil
JOHN T. MCNEIL
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, John T. McNeil, Assistant United States Attorney, do hereby certify that this document, filed through ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and that paper copies will be sent to those indicated as non registered participants on this date.

/s/ John T. McNeil

JOHN T. McNEIL
Assistant U.S. Attorney